

JS 44 (Rev. 12/07) (and rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

Virginia Pellegrini, Trustee of the Mario J. Pellegrini & Virginia E. Pellegrini Trust, & Virginia Pellegrini, an individual

**DEFENDANTS**

Technichem Inc., a California corporation, Mark J. Ng, an individual; Stephen S. Tung, an individual, et al.

**(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)**

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**(c) Attorney's (Firm Name, Address, and Telephone Number)**

William D. Wick, Jon K. Wactor, Anna L. Nguyen  
Wactor & Wick LLP, 180 Grand Avenue, Suite 950, Oakland, CA 94612  
(510) 465-5750

**Attorneys (If Known)**

Paul A. Henreid, Gordon & Rees LLP  
101 West Broadway, Suite 1600, San Diego, CA 92101  
(619) 696-6700

**II. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)**

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT (Place an "X" in One Box Only)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability  <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input checked="" type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

**V. ORIGIN (Place an "X" in One Box Only)**

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Cost recovery/contribution under RCRA & CERCLA for environmental contamination.

**VII. REQUESTED IN COMPLAINT:**

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** ☐ CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

same *Docket Number 07-cv-02497-CRB*

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE  
4/30/08

SIGNATURE OF ATTORNEY OF RECORD

*Anna L. Nguyen*

1 WILLIAM D. WICK (State Bar No. 063462)

2 JON K. WACTOR (State Bar No. 141566)

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9 Attorneys for Plaintiffs

10 Virginia Pellegrini and

11 Virginia Pellegrini, Trustee

12 of the Mario J. and Virginia E. Pellegrini Trust

13 UNITED STATES DISTRICT COURT

14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 VIRGINIA PELLEGRINI, Trustee of the  
16 Mario J. and Virginia E. Pellegrini Trust,  
17 and VIRGINIA PELLEGRINI, an  
18 individual,

19 Plaintiffs,

20 v.

21 TECHNICHEM, INC., a California  
22 corporation, MARK J. NG, an individual;  
23 STEPHEN S. TUNG, an individual;  
24 BOBBY PAGE CLEANERS, BONDED  
25 CLEANERS, CALIFORNIA HIGHWAY  
26 PATROL; CALIFORNIA STATE PRISON  
27 – CORCORAN, CALIFORNIA STATE  
28 PRISON AT FOLSOM, CALIFORNIA  
STATE PRISON – SAN QUENTIN,  
COLONY CLEANERS – 28, DESERT  
DISCOUNT CLEANERS, DOLLAR  
CLEANERS, DEUEL VOCATIONAL  
INSTITUTE, ECONOMY CLEANERS,  
EXECUTIVE (ONE HOUR)  
MARTINIZING, FRANCHISE TAX  
BOARD, INTERCITY CLEANERS, M & M  
CLEANERS, MONROVIA CLEANERS,  
MULE CREEK STATE PRISON, ONE  
HOUR CLEANERS, ONE PRICE  
CLEANERS, PACIFIC GROVE  
CLEANERS, PARADISE CLEANERS,  
PARK AVENUE CLEANERS,

Case No. 07-CV-02497-CRB

**FIRST AMENDED COMPLAINT FOR  
ENVIRONMENTAL COST RECOVERY  
AND CONTRIBUTION, INJUNCTIVE  
RELIEF, DECLARATORY RELIEF, AND  
DAMAGES**

**DEMAND FOR JURY TRIAL**

1 PROCUREMENT OFFICE OF THE  
 2 DEPARTMENT OF CORRECTIONS,  
 3 CORRECTIONAL TRAINING FACILITY,  
 4 PROCUREMENT OFFICE OF THE  
 5 SIERRA CONSERVATION CENTER, R.  
 6 BAUERLE TRUCKING, RESOLVENT,  
 7 INC., ROMIC ENVIRONMENTAL  
 8 TECHNOLOGIES, SAVE-ON CLEANERS,  
 9 VIRGINIA CLEANERS, VOGUE  
 10 CLEANERS, ZURICH INSURANCE  
 11 COMPANY, and DOES 1 to 200,

12 Defendants.

13 Plaintiffs VIRGINIA PELLEGRINI, Trustee of the Mario J. and Virginia E. Pellegrini  
 14 Trust, and VIRGINIA PELLEGRINI, individually ("Plaintiffs") seeks recovery of costs  
 15 incurred and to be incurred, and damages suffered and to be suffered, as a result of the  
 16 release of hazardous substances and hazardous wastes on Plaintiffs' property at 4245  
 17 Halleck Street in Emeryville, California ("the Property"). Plaintiffs demand a jury trial and  
 18 allege as follows:

## 19 **PARTIES**

20 1. Virginia Pellegrini is, and at all times material to this complaint has been, an  
 21 individual who resides in the State of California. She is also the Trustee of the Mario J.  
 22 and Virginia E. Pellegrini Trust.

23 2. Plaintiffs are informed and believe, and on that basis allege, that Defendant  
 24 Technichem, Inc. is, and at all times material to this complaint has been, a corporation  
 25 organized, and existing under the laws of the State of California, with places of business  
 26 in Hayward, California and Sparks, Nevada. Plaintiffs are informed and believe, and on  
 27 that basis allege, that Technichem, Inc., at all times herein mentioned is and has been  
 28 an owner and operator of a chemical recycling business, authorized to do business, and  
 doing business as Technichem, Inc., under the laws of the State of California.

1           3.     Plaintiffs are informed and believe, and on that basis allege, that Defendant  
2 Mark Ng is an individual who resides in the State of California. Plaintiffs are informed  
3 and believe, and on that basis allege, that Mark Ng was an operator and lessee of the  
4 Property, and that at all times herein mentioned Mr. Ng was and is the President of  
5 Technichem, Inc.

6           4.     Plaintiffs are informed and believe, and on that basis allege, that Defendant  
7 Stephen S. Tung is an individual who resides in the State of California. Plaintiffs are  
8 informed and believe, and on that basis allege, that Stephen S. Tung was an operator of  
9 the Property, and that at all times herein mentioned Mr. Tung was and is the Chief  
10 Operating Officer of Technichem, Inc. Plaintiffs are informed and believe, and on that  
11 basis allege, that Stephen Tung was also an operator of Resolvent, Inc., and at all times  
12 herein mentioned Mr. Tung is the President, Director, and Treasurer of Resolvent, Inc.

13           5.     Plaintiffs are informed and believe, and on that basis allege, that defendant  
14 Bobby Page Cleaners is an unknown business entity, form unknown, which is authorized  
15 to do and is doing business in the State of California.

16           6.     Plaintiffs are informed and believe, and on that basis allege, that defendant  
17 Bonded Cleaners is an unknown business entity, form unknown, which is authorized to  
18 do and is doing business in the State of California.

19           7.     Plaintiffs are informed and believe, and on that basis allege, that defendant  
20 California Highway Patrol is a State of California government agency, which sent  
21 hazardous materials and hazardous wastes to the Site for disposal, recycling or other  
22 handling and whose materials and wastes were released into the environment at the  
23 Site.

24           8.     Plaintiffs are informed and believe, and on that basis allege, that defendant  
25 California State Prison – Corcoran is a State of California government agency, which sent  
26 hazardous materials and hazardous wastes to the Site for disposal, recycling or other  
27 handling and whose materials and wastes were released into the environment at the  
28 Site.

1           9.     Plaintiffs are informed and believe, and on that basis allege, that defendant  
2 California State Prison at Folsom is a State of California government agency, which sent  
3 hazardous materials and hazardous wastes to the Site for disposal, recycling or other  
4 handling and whose materials and wastes were released into the environment at the  
5 Site.

6           10.    Plaintiffs are informed and believe, and on that basis allege, that defendant  
7 California State Prison – San Quentin is a State of California government agency, which  
8 sent hazardous materials and hazardous wastes to the Site for disposal, recycling or  
9 other handling and whose materials and wastes were released into the environment at  
10 the Site.

11          11.    Plaintiffs are informed and believe, and on that basis allege, that defendant  
12 Colony Cleaners - 28 is an unknown business entity, form unknown, which is authorized  
13 to do and is doing business in the State of California.

14          12.    Plaintiffs are informed and believe, and on that basis allege, that defendant  
15 Desert Discount Cleaners is an unknown business entity, form unknown, which is  
16 authorized to do and is doing business in the State of California.

17          13.    Plaintiffs are informed and believe, and on that basis allege, that defendant  
18 Dollar Cleaners is an unknown business entity, form unknown, which is authorized to do  
19 and is doing business in the State of California.

20          14.    Plaintiffs are informed and believe, and on that basis allege, that defendant  
21 Deuel Vocational Institute is a State of California government agency, which sent  
22 hazardous materials and hazardous wastes to the Site for disposal, recycling or other  
23 handling and whose materials and wastes were released into the environment at the  
24 Site.

25          15.    Plaintiffs are informed and believe, and on that basis allege, that defendant  
26 Economy Cleaners is an unknown business entity, form unknown, which is authorized to  
27 do and is doing business in the State of California.

28

1 16. Plaintiffs are informed and believe, and on that basis allege, that defendant  
2 Executive (One Hour) Martinizing is an unknown business entity, form unknown, which is  
3 authorized to do and is doing business in the State of California.

4 17. Plaintiffs are informed and believe, and on that basis allege, that defendant  
5 Franchise Tax Board is a State of California government agency, which sent hazardous  
6 materials and hazardous wastes to the Site for disposal, recycling or other handling and  
7 whose materials and wastes were released into the environment at the Site.

8 18. Plaintiffs are informed and believe, and on that basis allege, that defendant  
9 Intercity Cleaners is an unknown business entity, form unknown, which is authorized to  
10 do and is doing business in the State of California.

11 19. Plaintiffs are informed and believe, and on that basis allege, that defendant  
12 M & M Cleaners is an unknown business entity, form unknown, which is authorized to do  
13 and is doing business in the State of California.

14 20. Plaintiffs are informed and believe, and on that basis allege, that defendant  
15 Monrovia Cleaners is an unknown business entity, form unknown, which is authorized to  
16 do and is doing business in the State of California.

17 21. Plaintiffs are informed and believe, and on that basis allege, that defendant  
18 Mule Creek State Prison is a State of California government agency, which sent  
19 hazardous materials and hazardous wastes to the Site for disposal, recycling or other  
20 handling and whose materials and wastes were released into the environment at the  
21 Site.

22 22. Plaintiffs are informed and believe, and on that basis allege, that defendant  
23 One Hour Cleaners is an unknown business entity, form unknown, which is authorized to  
24 do and is doing business in the State of California.

25 23. Plaintiffs are informed and believe, and on that basis allege, that defendant  
26 One Price Cleaners is an unknown business entity, form unknown, which is authorized to  
27 do and is doing business in the State of California.

28

1           24. Plaintiffs are informed and believe, and on that basis allege, that defendant  
2 Pacific Grove Cleaners is an unknown business entity, form unknown, which is authorized  
3 to do and is doing business in the State of California.

4           25. Plaintiffs are informed and believe, and on that basis allege, that defendant  
5 Paradise Cleaners is an unknown business entity, form unknown, which is authorized to  
6 do and is doing business in the State of California.

7           26. Plaintiffs are informed and believe, and on that basis allege, that defendant  
8 Park Avenue Cleaners is an unknown business entity, form unknown, which is authorized  
9 to do and is doing business in the State of California.

10          27. Plaintiffs are informed and believe, and on that basis allege, that defendant  
11 Procurement Office of the Department of Corrections, Correctional Training Facility is a  
12 State of California government agency, which sent hazardous materials and hazardous  
13 wastes to the Site for disposal, recycling or other handling and whose materials and  
14 wastes were released into the environment at the Site.

15          28. Plaintiffs are informed and believe, and on that basis allege, that defendant  
16 Procurement Office of the Sierra Conservation Center is a State of California government  
17 agency, which sent hazardous materials and hazardous wastes to the Site for disposal,  
18 recycling or other handling and whose materials and wastes were released into the  
19 environment at the Site.

20          29. Plaintiffs are informed and believe, and on that basis allege, that defendant  
21 R. Bauerle Trucking is an unknown business entity, form unknown, which is authorized to  
22 do and is doing business in the State of California.

23          30. Plaintiffs are informed and believe, and on that basis allege, that defendant  
24 Resolvent, Inc. is a corporation that is organized and exists under the laws of Nevada  
25 and is authorized to do and is doing business in the State of California. Plaintiffs are  
26 informed and believe, and on that basis allege, that defendant Resolvent Inc. has a  
27 contractual or other relationship to Technichem, Inc. and has or may have handled and  
28

1 released hazardous materials and wastes on Plaintiffs' property during the course of its  
2 business operations and is therefore liable for Plaintiffs' injuries.

3 31. Plaintiffs are informed and believe, and on that basis allege, that defendant  
4 Romic Environmental Technologies is an unknown business entity, form unknown, which  
5 is authorized to do and is doing business in the State of California.

6 32. Plaintiffs are informed and believe, and on that basis allege, that defendant  
7 Save-On Cleaners is an unknown business entity, form unknown, which is authorized to  
8 do and is doing business in the State of California.

9 33. Plaintiffs are informed and believe, and on that basis allege, that defendant  
10 Virginia Cleaners is an unknown business entity, form unknown, which is authorized to  
11 do and is doing business in the State of California.

12 34. Plaintiffs are informed and believe, and on that basis allege, that defendant  
13 Vogue Cleaners is an unknown business entity, form unknown, which is authorized to do  
14 and is doing business in the State of California.

15 35. Plaintiffs are informed and believe, and on that basis allege, that defendant  
16 Zurich Insurance Company is a corporation that is organized and exists under the laws of  
17 the State of Illinois and is authorized to do business and is doing business in the State of  
18 California.

19 36. Plaintiffs are ignorant of the true names and capacities of the Defendants  
20 sued herein under the fictitious names DOES 1 to 200. Plaintiffs are informed and  
21 believe and thereon allege that each fictitious defendant was in some way responsible  
22 for, participated in, or contributed to matters that Plaintiffs complain of, and has a legally  
23 responsibility for those matters. When Plaintiffs become aware of the true names and  
24 capacities of the Defendants sued as DOES 1 to 200, Plaintiffs will amend this Complaint  
25 to state their true names.

26 37. Investigations are ongoing regarding the claims and the parties responsible  
27 for damages, injuries, and cost as alleged herein. The allegations of this First Amended  
28 Complaint are made on information and belief and are based upon the investigation

1 conducted to date, including the discovery responses of Defendants Technichem, Ng and  
2 Tung. This First Amended Complaint may be amended or supplemented if additional  
3 investigation or analysis so warrants.

4  
5 **NATURE OF THE ACTION**

6 38. This is an action that arises from pollution caused by Defendants' acts and  
7 omissions at the Property.

8 39. Defendants have caused or permitted the release of hazardous substances,  
9 contaminating the soil and groundwater on Plaintiffs' property.

10 40. Plaintiffs seek various relief, including but not limited to cleanup costs,  
11 damages, declaratory and injunctive relief, restitution, attorneys' fees and experts' costs  
12 as a result of environmental contamination caused by Defendants.

13  
14 **JURISDICTION**

15 41. This Court has jurisdiction over the subject matter of this action pursuant to  
16 the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6972(a); the  
17 Comprehensive Environmental Response and Compensation Act (CERCLA), 42 U.S.C.  
18 §§ 9613(b) and (f), and 42 U.S.C. § 9607; pursuant to the Declaratory Judgment Act, 28  
19 U.S.C. § 2201; and pursuant to 28 U.S.C. § 1331.

20 42. This Court also has subject matter jurisdiction over Plaintiffs' claims brought  
21 under state law by virtue of the supplemental jurisdiction provided in 28 U.S.C. § 1367,  
22 and under the doctrine of pendent jurisdiction set forth in *United Mine Workers v. Gibbs*,  
23 383 U.S. 715 (1966). Plaintiffs' claims under state law arise from the same nucleus of  
24 operative facts as the claims under federal law.

**VENUE**

43. Pursuant to 42 U.S.C. § 9613(b), venue is proper in any District in which the release or damages occurred. The release and damages occurred in Emeryville, California, which is in the Northern District of California.

**GENERAL ALLEGATIONS**

44. The Mario J. and Virginia E. Pellegrini Trust is the owner of the real property located near the corner of Park Avenue and Halleck Streets in Emeryville, California with Assessors Parcel Number 049-1036-002-00 and business address of 4245 Halleck Street, which consists of a large commercial building and various tenant spaces ("the Property"). Mario J. and Virginia E. Pellegrini owned the property prior to transferring it to the Trust.

45. On or about February 9, 1993, John Pellegrini & Virginia Pellegrini ("Lessors") and Mark J. Ng and Technichem, Inc. ("Lessees") entered into a Standard Industrial Lease – Multi Tenant (hereafter "the 1993 Lease"), for a term of seven years, commencing on March 1, 1993 and ending on February 2000 [Section 3.1 of 1993 Lease] with an option to extend the term of the lease for an additional seven years commencing when the prior term expired ["1993 Option to Extend Addendum"].

46. Technichem and Mark J. Ng agreed in the 1993 Lease:

- "to promptly comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements of any fire insurance underwriters or rating bureaus, during the term of Lessee's occupation and use of the leased premises and of common areas on the Property" [Section 6.2(b) of the 1993 Lease];
- "to not commit any waste upon the leased premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any occupant of the leased premises" [Section 6.2(b) of the 1993 Lease]; and

- 1                   ▪        "to accept the leased premises in its existing condition subject to all
- 2 applicable zoning, municipal, county and state laws, ordinances and regulations
- 3 governing and regulating the use of the premises and any covenants or restrictions of
- 4 record" [Section 6.3(b) of the 1993 Lease];
- 5                   ▪        "to keep in good order, condition and repair the leased premises and
- 6 every part thereof" [Section 7.2(a) of the 1993 Lease];
- 7                   ▪        "to surrender the premises upon termination of the lease in the
- 8 same condition as received and to repair any damage to the premises occasioned by the
- 9 installation or removal of Lessee's trade fixtures, alterations, furnishings and equipment"
- 10 [Section 7.2(c) of the 1993 Lease];
- 11                  ▪        "not to make any changes or alterations to the exteriors of the
- 12 premises or the exterior of the building located on the premises without Lessor's prior
- 13 written consent" [Section 7.3 of the 1993 Lease];
- 14                  ▪        "to obtain and keep in force during the term of the lease a policy of
- 15 Combined Single Limit Bodily Injury and Property Damage insurance insuring Lessor
- 16 against any liability arising out of the use, occupancy or maintenance of the premises in
- 17 an amount not less than \$500,000 per occurrence to insure performance by Lessee of its
- 18 indemnity obligations" [Section 8.1 of the 1993 Lease]; and
- 19                  ▪        "indemnify and hold harmless Lessor from and against any and all
- 20 claims arising from Lessee's use of the Property, or from the conduct of Lessee's
- 21 business or from any activity, work or things done, permitted or suffered by Lessee in or
- 22 about the [Property] or elsewhere" [Section 8.7 of the 1993 Lease].
- 23        47.    The 1993 lease included a provision that "Lessor shall not be liable for any
- 24 damages arising from any act or negligence of any other lessee, occupant or user of the
- 25 [Property], nor from the failure of Lessor to enforce the provisions of any other lease of
- 26 the [Property]" [Section 8.8 of the 1993 Lease] and that "Lessor is to be free from all
- 27 liability and claims for damages from any cause" [Section 8.7 of the 1993 Lease].
- 28

1           48. On April 12, 1993, Mark Ng executed a Guarantee of Lease where he  
 2 agreed as the undersigned that "as an inducement to Lessor executing this lease with  
 3 said Lessee, [Mark Ng] personally guarantee [s] the obligations of said Lessee. Lessee  
 4 [Mark Ng] hereby waive[s] Notice of Default and agree[s] that Lessor may proceed  
 5 against [him] personally without the necessity of obtaining a judgment or proceeding  
 6 against said Lessee." Mark Ng further agreed "to indemnify and hold Lessor harmless  
 7 from any and all liabilities and expenses of collection against said Lessee, including  
 8 attorneys' fees and costs."

9           49. On June 17, 1993, Technichem, Inc. and Mark Ng entered into additional  
 10 lease terms with Plaintiffs, which allowed Technichem, Inc. and Mark Ng to rent another  
 11 tenant space at 4245 Halleck Street from Plaintiffs under rental conditions and terms  
 12 identical to the 1993 Lease, including the 7 year lease term with 7 year option to extend.

13           50. Plaintiffs are informed and believe, and on that basis allege, that during  
 14 their period of operation, Defendants used, handled, and stored various hazardous  
 15 substances and wastes, including but not limited to tetrachloroethene ("PCE") and  
 16 operated a chemical recycling business at the Property.

17           51. Plaintiffs are informed and believe, and on that basis allege, that the State  
 18 of California, Department of Toxic Substances ("DTSC") cited Technichem, Inc. and Mark  
 19 Ng for hazardous waste violations occurring between October 2000 and May 2002,  
 20 including but not limited to:

- 21           ▪ filing false information on hazardous waste manifests,
- 22           ▪ submitting false information to DTSC inspectors,
- 23           ▪ improper disposal of hazardous waste,
- 24           ▪ unauthorized storage of hazardous waste,
- 25           ▪ failing to maintain adequate aisle space in hazardous waste storage
- 26           areas,
- 27           ▪ illegal transportation of hazardous waste,
- 28           ▪ failing to comply with the requirements for liability insurance, and

1                   ▪       failing to follow hazardous waste manifest requirements.

2           52.   Plaintiffs are informed and believe, and on that basis allege, that DTSC filed  
3 a complaint in Alameda Superior Court against Technichem, Inc. and Mark Ng in or about  
4 2000, alleging that Technichem and Mark Ng violated and continue to violate  
5 environmental regulations with respect to Technichem's and Mark Ng's hazardous waste  
6 operations at the Property.

7           53.   Plaintiffs are informed and believe, and on that basis allege, that  
8 Technichem, Inc. and Mark Ng entered into a Partial Consent Decree approved by the  
9 court on or about June 28, 2000.

10          54.   Plaintiffs are informed and believe, and on that basis allege, that  
11 Technichem, Inc. and Mark Ng entered into a Stipulated Final Judgment with DTSC on or  
12 about December 2003, related to their hazardous waste violations.

13          55.   Plaintiffs are informed and believe, and on that basis allege, that  
14 Technichem, Inc., Mark Ng, and Stephen Tung concealed from Plaintiffs their hazardous  
15 waste violations, their stipulated judgment with DTSC, and their failure to obtain a permit  
16 to operate the business during their occupancy of the Property.

17          56.   On or about March 2005, Technichem, Inc. and Mark Ng informed Mario  
18 Pellegrini that they intended to vacate their space at the Property and relocate to  
19 Hayward, California, and that they expected to proceed with facility closure of their  
20 solvent recycling operations under the direction of the DTSC. At that time, Mark Ng told  
21 Mario Pellegrini that Technichem, Inc.'s business operations resulted in no releases of  
22 hazardous substances onto the Property, and that facility closure required only above-  
23 ground, inside decontamination of the building and the removal of equipment, products,  
24 and materials.

25          57.   On or around March 2005, Plaintiffs were unaware that any release of  
26 hazardous substances had occurred on the Property, that Technichem, Inc. and Mark Ng  
27 had been cited for hazardous waste violations, that Technichem, Inc. and Mark Ng  
28

1 entered into a Stipulated Judgment, and that Defendants had failed to obtain and  
2 operate under a standardized permit.

3 58. On or about March 14, 2005, Plaintiffs' attorney Michael Lamphere notified  
4 Technichem, Inc. and Mark Ng, that Technichem, Inc. and Mark Ng owed back rent from  
5 January 2005 to March 2005 in the amount of \$5,097.50 each month, totaling \$13,195,  
6 and requested that Technichem, Inc. and Mark Ng pay its late rent immediately or  
7 provide a payment schedule.

8 59. On or about March 15, 2005, Technichem, Inc. and Mark Ng notified  
9 Plaintiffs that Technichem, Inc. and Mark Ng retained the services of Clayton Group  
10 Services, Inc., an environmental engineering firm, to facilitate Technichem, Inc. and  
11 Mark Ng's regulatory compliance for site closure. Mark Ng told Michael Lamphere that he  
12 believed Mr. Pellegrini agreed to forego any rent payments from Technichem, Inc. and  
13 Mark Ng.

14 60. On or about March 22, 2005, Plaintiffs' attorney Michael Lamphere notified  
15 Technichem, Inc. and Mark Ng that Mr. Pellegrini required payment of the outstanding  
16 rent for January, February, and March 2005 in full and never agreed to forego any rent  
17 payments by Technichem, Inc. and Mark Ng. Mr. Lamphere also notified Mark Ng that  
18 Technichem, Inc. and Mark Ng remained responsible for monthly rent until DTSC and the  
19 City of Emeryville provided final closure and clearance of the Technichem facility.

20 61. In or about April 2005, Plaintiffs retained PES Environmental, Inc. ("PES")  
21 to monitor the closure activities of Technichem, Inc. facility.

22 62. Technichem, Inc., Mark Ng, and Stephen Tung ceased business operations  
23 at the Property in or around May 2005, and moved the business to Hayward, California.

24 63. In or about June 2005, Plaintiffs discovered for the first time that there was  
25 soil and groundwater contamination at, on, and under the Property, when PES reported  
26 the findings of Clayton Group Services, Inc.'s May 27, 2005 "Facility Closure Passive Soil  
27 Gas Investigation Work Plan."

28

1           64. Plaintiffs are informed and believe, and on that basis allege, that prior  
2 environmental investigations conducted at or near the Property before May 2005 found  
3 hazardous substances in the soil and groundwater at, on, under, or emanating from  
4 Defendants' operations at the Property, which Technichem, Inc., Mark Ng, and Stephen  
5 Tung concealed from Plaintiffs.

6           65. Plaintiffs are informed and believe, and on that basis allege, that during  
7 Technichem, Inc., Mark Ng, and Stephen Tung's period of occupancy and operation, they  
8 caused the discharge, dispersal, and release of hazardous substances, including but not  
9 limited to perchloroethylene ("PCE") and degradation products such as trichloroethylene  
10 ("TCE"), dichloroethane 1,1 and 1,2 and dichloroethene 1,1 and 1,2 ("cis-1,2-DCE"), vinyl  
11 chloride (hereinafter, collectively, "Hazardous Substances") into soil and groundwater at,  
12 on, near, and under the Property.

13           66. Technichem, Inc., Mark Ng, and Stephen Tung knew, at the time of their  
14 occupancy of the Property, that hazardous wastes and substances from its solvent  
15 recycling operations had been disposed on or around the Property and had not been  
16 cleaned up.

17           67. Plaintiffs are informed and believe, and on that basis allege, that solid and  
18 hazardous wastes handled and disposed of at the Property have contaminated the soil  
19 and groundwater at, under, on, or near the Property, which may present an imminent  
20 and substantial endangerment to health or the environment.

21           68. Throughout Technichem, Inc.'s tenancy, and continuing until June 2005,  
22 Plaintiffs had no knowledge of any contamination on the Property.

23           69. On or about August 23, 2005, Technichem, Inc. and Mark Ng told Plaintiffs'  
24 attorney Michael Lamphere and Mr. Pellegrini that they had only \$15,000 in assets and  
25 risked bankruptcy if Technichem, Inc. and Mark Ng proceeded with the facility closure  
26 work required by DTSC.

27  
28

1           70. On or about September 2005, Technichem, Inc. and Mark Ng represented  
2 to both Mr. Lamphere and Mr. Pellegrini that the cost of site characterization and facility  
3 closure was estimated to be less than \$60,000.

4           71. On or about January 6, 2006, Technichem, Inc. and Mark Ng notified  
5 Plaintiffs and DTSC that Technichem, Inc. lacked the financial resources to undertake any  
6 facility closure activities, and consequently, Technichem, Inc. and Mark Ng requested  
7 that Plaintiffs assume closure and corrective action obligations associated with the  
8 closure of the Technichem, Inc. facility.

9           72. On or about January 30, 2006, DTSC agreed to allow Plaintiffs to accept  
10 complete control and obligation of the closure and corrective action process associated  
11 with closure of the Technichem, Inc. facility.

12           73. On or about January 2006, Plaintiffs, in reliance of Technichem, Inc. and  
13 Mark Ng's assurances and cost estimates, began to expend their own resources to assist  
14 in Technichem, Inc.'s facility closure in order to expedite the sale of the Property to a  
15 prospective buyer. However, due to the extent of contamination on the Property and the  
16 failure of Technichem, Inc. and Mark Ng to complete the facility closure, Plaintiffs could  
17 not complete the sale of the Property.

18           74. From January 2006 to present, Plaintiffs expressly informed Technichem,  
19 Inc. and Mark Ng that they remained responsible for any and all Plaintiffs' costs  
20 expended to assist in facility closure, as well as payment for back rent owed, and  
21 damages incurred for loss of use of the Property until DTSC approved the facility closure.

22           75. Plaintiffs never conducted any solvent-related operations at the Property  
23 and never stored, sold, or used PCE at the Property.

24           76. Plaintiffs are informed and believe, and on that basis allege, that during  
25 their period of occupancy and operation Defendants were involved in the business of  
26 purchasing, using, producing, generating, processing, storing, releasing, discharging,  
27 disposing of, and venting Hazardous Substances. As such, Defendants had superior  
28 knowledge regarding the attributes and propensities of the Hazardous Substances and

1 their effects on the environment and human health. Because Defendants have such  
2 superior knowledge with respect to their own business processes and the Hazardous  
3 Substances it produced, generated, emitted, released, discharged, and vented,  
4 Defendants had and continue to have an obligation to disclose to Plaintiffs and the public  
5 accurate, reliable and completely truthful information about the dangers and  
6 consequences of exposure to such Hazardous Substances. Further, Defendants had and  
7 continue to have an obligation not to conduct their business activities in an oppressive  
8 and malicious manner.

9 77. Plaintiffs are informed and believe, and on that basis allege, that  
10 Defendants knew or should have known that their business activities and the Hazardous  
11 Substances they handled and disposed of were dangerous to human health and the  
12 environment. Defendants acted with malice and oppression toward Plaintiffs and the  
13 public by:

- 14       ▪ failing to prevent the discharge or release of Hazardous Substances  
15 which Defendants knew, and/or acted with a willful and conscious disregard for the fact  
16 that Hazardous Substances would, harm the soil, water, and environment;
- 17       ▪ failing to comply with laws, guidelines, and safety practices  
18 applicable to generating, emitting, releasing, discharging, storing, processing and venting  
19 Hazardous Substances, failing to establish and maintain adequate pollution control  
20 technologies to prevent, reduce, and/or control discharges of Hazardous Substances;
- 21       ▪ failing to timely and adequately repair equipment and toxic chemical  
22 storage and disposal containers to prevent, reduce and/or control emissions and  
23 discharges of Hazardous Substances;
- 24       ▪ failing to report and/or disclose releases, leaks, and spills, whether  
25 accidental, negligent or intentional, but which were known to Defendants;
- 26       ▪ failing to accurately report and/or disclose to Plaintiffs and the public  
27 the amounts of discharges, leaks and spills;

1           ▪       failing to establish and maintain safety practices and procedures to  
2 protect human health and the environment from being harmed by Hazardous Substances  
3 released by Defendants; and

4           ▪       failing to implement measures to prevent exposure to humans  
5 knowing that such releases had happened in the past.

6       78. Plaintiffs have had to perform investigation and cleanup activities, and to  
7 retain and pay consultants and attorneys for that purpose, in accordance with directives  
8 from the DTSC. Those activities, costs, and fees will continue after the filing of this  
9 Complaint.

10       79. Hazardous Substances, including solid and hazardous wastes, handled,  
11 stored, and disposed of at the Property have contaminated the soil and groundwater at  
12 the Property, and may be migrating to adjacent properties.

13       80. Plaintiffs discovered contamination at the Property no earlier than June  
14 2005, and could not have made the discovery of the contamination earlier than June  
15 2005 despite reasonable diligence because Defendants conspired to continue the  
16 nuisance and to conceal its existence from Plaintiffs.

17       81. DTSC identified Technichem, Inc., Plaintiffs, and Zurich Insurance Company  
18 as responsible parties for the contamination at the Property in letters dated April 17,  
19 2007 and February 22, 2008.

20       82. Each of the Defendants is a "person" as defined in CERCLA § 101(21), 42  
21 U.S.C. § 9601(21), and in California Health and Safety Code § 25319 and has by  
22 contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with  
23 a transporter for transport for disposal or treatment at the Property, of hazardous  
24 substances as defined in CERCLA § 101(14), 42 U.S.C. § 9601 (14), and in Health and  
25 Safety Code §§ 25316 and 25317. Moreover, some or all of the Defendants accepted  
26 hazardous substances for transport to and from the Property by operating waste disposal  
27 services which collected waste within their jurisdictions. All of the hazardous substances  
28 described herein were delivered to and stored, treated or disposed of at the Property.

1 83. The Property is a "facility," as defined in CERCLA § 101(9), 42 U.S.C. §  
2 9601 (a) and in Health and Safety Code § 25310. The facility operated from  
3 approximately 1986 through 2005. Over the course of the facility's operation, wastes  
4 which contained hazardous substances as defined in CERCLA § 101(14), 42 U.S.C. §  
5 9601(14), and in Health and Safety Code § 25316 and 25317, were disposed of at the  
6 Property.

7 84. There have been actual or threatened "releases" of hazardous substances  
8 from the Site, within the meaning of CERCLA § 101(22), 42 U.S.C. § 9601(22), and  
9 Health and Safety code §§ 25320 and 25321.

10 85. Plaintiffs are informed and believe, and on that basis allege, that  
11 Defendants caused contamination by not properly handling, storing, or disposing of those  
12 hazardous substances. The hazardous substances which the Defendants arranged for  
13 disposal or treatment or arranged to have transported to or from the Site for treatment  
14 and disposal were released, or threatened to be released, into the environment.

15 86. Each Defendant is or may be liable to Plaintiffs, for all or portion of the  
16 costs incurred and to be incurred by Plaintiffs related to the contamination.

17 87. An actual controversy has arisen and now exists between Defendants and  
18 Plaintiffs in that Plaintiffs contend, and Defendants deny, that: (a) as between  
19 Defendants and Plaintiffs, responsibility for the damages claimed by Plaintiffs rests  
20 entirely with Defendants; and (b) as a result, Defendants are obligated to fully indemnify  
21 Plaintiffs for any sums that Plaintiffs have expended in prosecuting this action and  
22 defending against third party claims for investigation and cleanup of the Property,  
23 including but not limited to any amount Plaintiffs may pay due to any costs, damages, or  
24 judgments related to the contamination caused by Defendants.

25 88. As a result of Defendants' acts and omissions, Plaintiffs have been and will  
26 be damaged as follows:

27 (a) Plaintiffs have incurred substantial expenses of approximately over  
28 \$225,000 as of April 3, 2008, and will continue to expend additional sums, in an exact

1 amount to be proved at trial, including consultants' and attorneys' fees, associated with  
2 investigating, monitoring, assessing and evaluating soil and groundwater contamination  
3 on, under and around the Property;

4 (b) DTSC has named Plaintiffs as responsible parties, due to Plaintiffs'  
5 ownership of the Property. DTSC intends to require further investigation, remediation  
6 and monitoring of environmental contamination on the Property, which will cause Plaintiff  
7 to incur substantial additional costs to investigate, remediate, monitor and report on  
8 environmental contamination at the Property until facility closure is achieved;

9 (c) Plaintiffs will incur substantial additional costs to remove the  
10 contamination from the Property in order to receive site closure and sell the property;

11 (d) Plaintiffs' use of the Property has been limited and restricted by  
12 virtue of the contamination, because the contamination precludes developing the  
13 Property for its highest and best use, and because Plaintiffs' use of the Property may be  
14 restricted in the future absent adequate remediation, causing damage to Plaintiffs in  
15 amounts to be proved at trial;

16 (e) the value of Plaintiffs' Property has been diminished by the  
17 contamination, with the specific amount to be proved at trial, in that, among other  
18 things, it has significantly delayed Plaintiffs' ability to sell or lease the Property from 2005  
19 to a date as yet unknown;

20 (f) Plaintiffs have incurred and will continue to incur attorneys' fees,  
21 costs and expenses in prosecuting this action, and to respond to and defend against  
22 governmental agency administrative actions; and

23 (g) Plaintiffs may be required to defend future actions and  
24 administrative proceedings arising directly or indirectly from Defendants' contamination  
25 of the Property.

26 89. By virtue of the above-described acts and omissions of Defendants,  
27 Plaintiffs (a) will incur response costs, including attorneys' fees, due to the contamination  
28 caused by Defendants at the Property, (b) anticipate that they will be required to expend

1 additional sums to achieve regulatory compliance and site closure, and (c) have suffered  
 2 a negative impact on their real property value resulting in compensable damages for  
 3 diminution in its property value. As a result of the foregoing, Plaintiffs have been and  
 4 will be damaged in an amount which will be proven at trial.

### 5 6 **FIRST CAUSE OF ACTION**

7 *(Injunctive Relief and Attorneys' Fees Under RCRA § 7002(a)(1)(A) – All Defendants)*

8 90. Plaintiffs reallege paragraphs 1 through 89 and incorporate them by  
 9 reference.

10 91. RCRA section 7002(a), 42 U.S.C. § 6972(a), provides that any person may  
 11 commence a civil action "against any person . . . who is alleged to be in violation of any  
 12 permit, standard, regulation, condition, requirement, prohibition, or order which has  
 13 become effective pursuant to this chapter."

14 92. Plaintiffs, each of them, is a person within the meaning of RCRA section  
 15 1004(15), 42 U.S.C. § 6903(15).

16 93. Defendants, each of them, is a "person" within the meaning of RCRA  
 17 section 1004(15), 42 U.S.C. § 6903(15).

18 94. California has been and is authorized by the U.S. Environmental Protection  
 19 Agency to operate its hazardous waste control laws and regulations pursuant to RCRA.  
 20 Pursuant to Section 3006(d) of RCRA, 42 U.S.C. § 6926(d), "Any action taken by a State  
 21 under a hazardous waste program authorized under this section shall have the same  
 22 force and effect as action taken by the Administration under this subchapter."

23 95. Plaintiffs allege that Defendants are in violation of a permit, standard,  
 24 regulation, condition, requirement, prohibition, or order which has become effective  
 25 under RCRA, including violations of subchapter III of RCRA (including, but not limited to,  
 26 42 U.S.C. §§ 6922, 6923, 6924, 6925 and 6934).

27 96. Prior to filing this action, Plaintiffs gave notice pursuant to RCRA §  
 28 7002(b)(1)(A), 42 U.S.C. § 6972(b)(1)(A) and 40 C.F.R. § 254.1 to the Administrator of

1 the United States Environmental Protection Agency ("U.S. EPA"), Region IX,  
 2 Administrator of the U.S. EPA, the United States Attorney General, the Director of the  
 3 California Department of Toxic Substance Control, and Defendants, informing them of  
 4 the alleged violations and of Plaintiffs' intent to bring this suit against Defendants. This  
 5 action is authorized to be brought "immediately after such notification" pursuant to 42  
 6 U.S.C. § 6972(b)(1)(A).

7 97. Plaintiffs seek injunctive relief under RCRA, ordering Defendants to  
 8 investigate, abate and remediate the endangerment posed by the contamination, and to  
 9 comply, at their expense, with any and all regulatory agencies' demands regarding the  
 10 contamination.

11 98. Pursuant to 42 U.S.C § 6972(e), Plaintiffs seek an award of the costs of this  
 12 litigation including but not limited to reasonable attorneys' fees and experts' fees, and  
 13 including but not limited to similar fees to monitor Defendants' compliance with any  
 14 orders or judgments issued by this Court.

## 15 16 **SECOND CAUSE OF ACTION**

17 *(Injunctive Relief and Attorneys' Fees Under RCRA § 7002(a)(1)(B) – All Defendants)*

18 99. Plaintiffs reallege paragraphs 1 through 98 and incorporate them by  
 19 reference.

20 100. RCRA section 7002(a), 42 U.S.C. § 6972(a), provides as follows:

21 "(a) . . . any person may commence a civil action on this behalf --

22 (1) . . .

23 (B) against any person . . . who has contributed or who is  
 24 contributing to the past or present handling, storage, treatment,  
 transportation, or disposal of any solid or hazardous waste which  
 may present an imminent and substantial endangerment to health or  
 the environment . . . ."

25 101. Defendants have contributed and/or are contributing to the handling,  
 26 storage, treatment, transportation and/or disposal of "solid or hazardous wastes" within  
 27 the meaning of RCRA sections 1004(27) and 1004(5), 42 U.S.C. §§ 6903(27) and  
 28

1 6903(5), that "may present an imminent and substantial endangerment to health or the  
2 environment" within the meaning of RCRA section 7002(a), 42 U.S.C. § 6972(a).

3 102. Plaintiffs allege that Defendants' contribution to the past or present  
4 handling, storage, treatment, transportation and/or disposal of solid and hazardous  
5 wastes which may present an imminent and substantial endangerment to health or the  
6 environment includes violations of subchapter III of RCRA (including, but not limited to,  
7 42 U.S.C. §§ 6922, 6923, 6924, 6925 and 6934).

8 103. Prior to filing this action, Plaintiffs gave notice pursuant to RCRA  
9 § 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A) and 40 C.F.R. § 254.1 to the Administrator of  
10 the United States Environmental Protection Agency ("U.S. EPA"), Region IX,  
11 Administrator of the U.S. EPA, the United States Attorney General, the Director of the  
12 California Department of Toxic Substance Control, and Defendants, informing them of  
13 the endangerment and of Plaintiffs' intent to bring this suit against Defendants. This  
14 action is authorized to be brought "immediately after such notification" pursuant to 42  
15 U.S.C. § 6972(b)(2)(A).

16 104. Plaintiffs seek injunctive relief under RCRA, ordering Defendants to  
17 investigate, abate and remediate the endangerment posed by the contamination, and to  
18 comply, at their expense, with any and all regulatory agencies' demands regarding the  
19 contamination.

20 105. Pursuant to 42 U.S.C § 6972(e), Plaintiffs seek an award of the costs of this  
21 litigation including but not limited to reasonable attorneys' fees and experts' fees, and  
22 including but not limited to similar fees to monitor Defendants' compliance with any  
23 orders or judgments issued by this Court. Accordingly, Plaintiffs request that judgment  
24 be entered in favor of Plaintiffs and against Defendants as set forth below.

25  
26 **THIRD CAUSE OF ACTION**

27 *(Cost Recovery under CERCLA – All Defendants)*  
28

1 106. Plaintiffs reallege paragraphs 1 through 105 and incorporate them by  
2 reference.

3 107. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides as follows:

4 (2) any person who at the time of disposal of any  
5 hazardous substances owned or operated any facility at which  
6 such hazardous substances were disposed of, [or]

7 (3) any person who . . . arranged for disposal or  
8 treatment . . . of hazardous substances . . . at any facility

9 (4) shall be liable for –

10 (B) any other necessary costs of response incurred by  
11 any other person consistent with the national contingency  
12 plan. . . .

13 108. A "release" of hazardous substances within the meaning of CERCLA Section  
14 101(22), 42 U.S.C. § 9601(22), occurred at the Property.

15 109. Chemicals released at the Property are "hazardous substances" within the  
16 meaning of CERCLA Section 101(14), 42 U.S.C. §9601(14).

17 110. The Property is a "facility" within the meaning of CERCLA Section 101(9),  
18 42 U.S.C. § 9601(9).

19 111. As a result of the "release" of "hazardous substances," Plaintiffs have  
20 conducted and are conducting a "response" within the meaning of CERCLA Section  
21 101(25), 42 U.S.C. § 9601(25), and have incurred and will incur response costs.

22 112. Defendants are liable under CERCLA § 107(a)(2), (3) and (4), 42 U.S.C.  
23 § 9607(a)(2),(3) and (4) as the operators of the Property "at the time of disposal," as  
24 persons who "arranged for disposal" of CERCLA hazardous substances on the Property,  
25 and as persons who transported hazardous substances to and from the Property. Each  
26 Defendant therefore is a "covered person," liable for any and all costs, damages, and  
27 other relief under 42 U.S.C. § 9607(a).

28 113. Plaintiffs have incurred, and will continue to incur, substantial costs  
consistent with the National Contingency Plan or pursuant to federal and/or state

1 authorization to investigate and remediate hazardous substances in soils and  
2 groundwater at the Property.

3 114. Plaintiffs request that judgment be entered in favor of Plaintiffs and against  
4 Defendants pursuant to 42 U.S.C. § 9607(a) for all response costs that Plaintiffs have  
5 incurred and will in the future incur to investigate, remove or remediate hazardous  
6 substances at the Property.

7  
8 **FOURTH CAUSE OF ACTION**

9 *(Contribution under CERCLA – All Defendants)*

10 115. Plaintiffs reallege paragraphs 1 through 114 and incorporate them by  
11 reference.

12 116. Each Defendant is a "person" as defined by Section 101(21) of CERCLA, 42  
13 U.S.C. § 9601(21).

14 117. The Property is a "facility" within the meaning of Section 101(9) of CERCLA,  
15 42 U.S.C. § 9601(9).

16 118. Chemicals used, stored, and disposed of by Defendants at the Property  
17 were "hazardous substances," within the meaning of Section 101(14) of CERCLA, 42  
18 U.S.C. § 9601(14), and a "release" or "threatened release" of hazardous substances  
19 within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), has occurred at  
20 the Property.

21 119. Defendants are liable under CERCLA § 107(a)(2), (3) and (4), 42 U.S.C.  
22 § 9607(a)(2),(3) and (4) as the operators of the Property "at the time of disposal," as  
23 persons who "arranged for disposal" of hazardous substances on the Property, and as  
24 persons who transported hazardous substances to the Property. Each Defendant is  
25 therefore a "covered person," liable for any and all costs, damages, and other relief  
26 under 42 U.S.C. Sections 9607(a) and 9613.

27 120. If the Court concludes that Plaintiffs are liable under CERCLA § 107(a)  
28 simply because they are the current owners and operators of the Property on which

1 Defendants released hazardous substances, or because they owned or operated the  
2 Property at the time of disposal of hazardous substances thereon, then Plaintiffs are  
3 entitled to contribution under CERCLA § 113, 42 U.S.C. § 9613, from Defendants.

4 121. Plaintiffs have incurred, and likely will continue to incur, substantial costs  
5 consistent with the National Contingency Plan to investigate, remove or remediate  
6 hazardous substances found in soils and groundwater at the Property.

7 122. Plaintiffs request that judgment be entered in favor of Plaintiffs and against  
8 Defendants pursuant to 42 U.S.C. § 9613 for the response costs that Plaintiffs have  
9 incurred to investigate and/or remediate hazardous substances at the Property.

10  
11 **FIFTH CAUSE OF ACTION**

12 *(Declaratory Judgment under CERCLA – All Defendants)*

13 123. Plaintiffs reallege paragraphs 1 through 122, and incorporate them by  
14 reference.

15 124. CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), provides that in an  
16 action to recover costs, "the court shall enter a declaratory judgment on liability for  
17 response costs or damages that will be binding on any subsequent action or actions to  
18 recover further response costs or damages."

19 125. This action is a cost-recovery action of the type described in CERCLA  
20 Section 113(g)(2), 42 U.S.C. § 9613(g)(2).

21 126. Plaintiffs will incur additional response costs consistent with the National  
22 Contingency Plan.

23 127. An actual controversy presently exists between Plaintiffs and Defendants.

24 128. Plaintiffs desire a determination of the respective rights, duties, and  
25 liabilities of Plaintiffs and Defendants for future response costs and damages. Plaintiffs  
26 are entitled to declaratory relief under 42 U.S.C. Sections 9607 and 9613, establishing  
27 the liability of Defendants for such response costs for the purposes of this and any  
28 subsequent action or actions to recover further response costs. Accordingly, Plaintiffs

1 request that judgment be entered in favor of Plaintiffs and against Defendants as set  
 2 forth below.

### 3 4 **SIXTH CAUSE OF ACTION**

5 *(Contribution Under Hazardous Substance Account Act – All Defendants)*

6 129. Plaintiffs incorporate the allegations of paragraphs 1 through 128 above,  
 7 and incorporate those paragraphs by reference.

8 130. The California Hazardous Substance Account Act ("HSAA") codified at  
 9 California Health & Safety Code §§ 25300 through 25395.45, states, in relevant part, at §  
 10 25363(e):

11 Any person who has incurred removal or remedial action costs  
 12 in accordance with this chapter or the federal act [defined as  
 13 the Comprehensive Environmental Response, Compensation,  
 14 and Liability Act of 1980, as amended (42 U.S.C. §§9601, *et*  
*seq.*)] may seek contribution or indemnity from any person  
 who is liable pursuant to this chapter...

15 131. Plaintiffs, each of them, is a "person" who has incurred or will incur  
 16 removal and remedial action costs in accordance with Chapter 6.8 of the HSAA and with  
 17 the federal act, within the meaning of HSAA § 25319.

18 132. Each Defendant is a "person who is liable" for removal and remedial action  
 19 costs incurred by Plaintiffs within the meaning of HSAA §§ 25319 and 25323.5.

20 133. The contaminants released or discharged by Defendants are "hazardous  
 21 substances" within the meaning of HSAA § 25316, and the federal act.

22 134. The Property is a "site" within the meaning of HSAA § 25323.9.

23 135. The costs incurred by Plaintiffs to investigate and remediate hazardous  
 24 substances at the Property have been incurred for "removal" or "remedial" actions within  
 25 the meaning of HSAA §§ 25322 and 25323.

26 136. All removal and remedial costs incurred, and to be incurred, by Plaintiffs at  
 27 the Property are necessary costs of response that are consistent with HSAA § 25356.1.

28

1 137. Plaintiffs have given or will give written notice of this action to the Director  
2 of the California Department of Toxic Substances Control pursuant to HSAA § 25363(e).

3 138. Defendants are liable to Plaintiffs for all removal and remedial costs  
4 incurred to remedy hazardous substances Defendants have released or disposed at the  
5 Property.

6 139. Plaintiffs are entitled to contribution from Defendants for all response costs  
7 under California Health & Safety Code Section 25363(e). Accordingly, Plaintiffs request  
8 that judgment be entered in favor of Plaintiffs and against Defendants as set forth below.

9

10

**SEVENTH CAUSE OF ACTION**

11

*(HSAA Declaratory Relief – Against All Defendants)*

12

13

140. Plaintiffs reallege and incorporate by reference the allegations of the  
foregoing paragraphs 1 through 139 as if fully set forth herein.

14

15

16

141. Plaintiffs have incurred costs in connection with their investigation of  
contamination on the Property in accordance with the HSAA, California Health & Safety  
Code §25300, et seq.

17

18

19

20

142. An actual controversy has arisen and now exists among Plaintiffs and  
Defendants in that Plaintiffs contend, and Defendants deny, that Defendants are liable  
under the HSAA for the costs incurred and to be incurred by Plaintiffs to investigate,  
remove or remediate Hazardous Substances at the Property.

21

22

23

24

143. Because the extent and magnitude of the contamination of the Property is  
not fully known at this time, the contamination has not been fully mitigated, and the  
Hazardous Substances continue to migrate from the Property, Plaintiffs will incur  
necessary response costs under the HSAA in the future.

25

26

27

28

144. Pursuant to California Health and Safety Code § 25363, Plaintiffs are  
entitled to a declaratory judgment establishing Defendants' liability for such response  
costs for the purposes of this and any subsequent action or actions to recover further

1 response costs. Accordingly, Plaintiffs request that judgment be entered in favor of  
2 Plaintiffs and against Defendants as set forth below.

3  
4 **EIGHTH CAUSE OF ACTION**

5 *(Contribution – Against All Defendants)*

6 145. Plaintiffs incorporate the allegations of paragraphs 1 through 144, inclusive,  
7 of these causes of action by this reference as though fully set forth herein.

8 146. As a direct and proximate result of the releases of Hazardous Substances  
9 into the environment, as alleged above, Plaintiffs have incurred and will incur response  
10 costs, beyond their share, for investigation and cleanup of the alleged contamination.

11 147. Plaintiffs are informed and believe, and on that basis allege, that the  
12 conduct of Defendants was the proximate cause of the damages which Plaintiffs have  
13 incurred because of claims from third parties such as the DTSC.

14 148. Under Section 1432 of the California Civil Code (which provides in pertinent  
15 part, "a party to ... a joint and several obligation, who satisfies more than his share of  
16 the claim against all, may require a proportionate contribution from all the parties joined  
17 with him"), and under general equitable principles and rules governing this action,  
18 Plaintiffs are entitled to contribution from Defendants for their share of the response  
19 costs and damages paid and to be paid by Plaintiffs.

20  
21 **NINTH CAUSE OF ACTION**

22 *(Breach of Contract/Breach of Lease – Against Technichem, Inc. and Mark Ng only)*

23 149. Plaintiffs reallege and incorporate herein by reference each and every  
24 allegation set forth in Paragraphs 1 through 148 as though fully set forth herein.

25 150. Plaintiffs are informed and believe and, upon such information and belief,  
26 allege that Defendants Technichem, In. and Mark Ng entered into contracts and leases to  
27 conduct business operations on the Property.

28 151. Plaintiffs have performed all of their obligations in said agreements.

1 152. Plaintiffs are informed and believe and, upon such information and belief,  
2 allege that Defendants Technichem, Inc. and Mark Ng have not performed their  
3 contractual obligations and duties expressly identified in their contracts with Plaintiffs.

4 153. As a direct and proximate result of the breach of contractual duties by  
5 Defendants Technichem, Inc. and Mark Ng, Plaintiffs have sustained damages in a sum  
6 presently unascertained, but in an amount to be shown according to proof at trial.

7 154. Plaintiffs are informed and believe, and on such basis allege, that these  
8 damages include but are not limited to costs incurred by Plaintiffs to respond to the  
9 claims of regulatory agencies, including the DTSC, to make insurance demands and  
10 claims, to begin facility closure and investigate environmental contamination at the  
11 Property, rent owed to Plaintiffs for Defendants' occupancy of the Property, loss of use  
12 damages from May 2005 through the present, and continuing, due to Plaintiffs' inability  
13 to rent, lease or sell the Property because of Defendant's contamination, and loss  
14 associated with diminution in value of the Property. Plaintiffs are continuing to be  
15 damaged, and will have to spend additional sums.

16 155. Plaintiffs are informed and believe and, upon such information and belief,  
17 allege that Plaintiffs' damages are directly and proximately caused and contributed to by  
18 the sole fault and/or negligence and/or strict liability or other actionable conduct of  
19 Defendants Technichem, Inc. and Mark Ng.

20 156. Plaintiffs pray for judgment as hereinafter set forth.

21  
22 **TENTH CAUSE OF ACTION**

23 *(Contractual Indemnity – Against Technichem, Inc. and Mark Ng only)*

24 157. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through  
25 156, inclusive, of these causes of action by this reference as though fully set forth herein.

26 158. Defendants Technichem, Inc., and Mark Ng (collectively, the "Lessee"),  
27 entered into written contracts (the Leases) with Plaintiffs (collectively, the "Lessor"),  
28 which expressly stated that:

1 Lessee shall indemnify and hold harmless Lessor from and  
 2 against any and all claims arising from Lessee's use of the  
 3 [Property], or from the conduct of Lessee's business or from any  
 4 activity, work or things done, permitted or suffered by lessee in or  
 5 about the [Property] or elsewhere and shall further indemnify and  
 6 hold harmless Lessor from and against any and all claims arising  
 7 from any breach or default in the performance of any obligation on  
 8 Lessee's part to be performed under the terms of this Lease, or  
 9 arising from any act or omission of Lessee, or any of Lessee's  
 10 agents, contractors, or employees, and from and against all costs,  
 11 attorney's fees, expenses and liabilities incurred in the defense of  
 12 any such claim or any action or proceedings brought thereon, and in  
 13 case any action or proceeding be brought against Lessor by reason  
 14 or any such claim.

15 [Section 8.7 of 1993 Lease].

16 159. Defendant Mark J. Ng personally guaranteed the obligations of said Lessee  
 17 and further agreed "to indemnify and hold Lessor harmless from any and all liabilities and  
 18 expenses of collection against said Lessee, including attorneys' fees and costs."

19 160. Plaintiffs have performed and satisfied all the conditions precedent to the  
 20 obligations of the contracts.

21 161. Plaintiffs are informed and believe and, upon such information and belief,  
 22 allege that Defendants Technichem, Inc. and Mark Ng have not performed their  
 23 contractual obligations and duties expressly identified in their contracts with Plaintiffs.

24 162. Plaintiffs are informed and believe and, upon such information and belief,  
 25 allege that Plaintiffs' damages are directly and proximately caused and contributed to by  
 26 the sole fault, and/or negligence, and/or strict liability and/or other actionable conduct of  
 27 Defendants Technichem, Inc. and Mark Ng, in breaching such terms of their agreements  
 28 with Plaintiffs.

163. Plaintiffs are entitled to indemnity from Defendant Technichem, Inc. and  
 Mark Ng as expressly provided by contract for all costs incurred, and to be incurred, by  
 Plaintiffs in connection with the contamination at and emanating from the Property,  
 including attorneys' fees.

**ELEVENTH CAUSE OF ACTION**

*(Equitable Indemnity and Recovery of Attorneys' Fees under CCP 1021.6*

*– Against All Defendants)*

164. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 163, inclusive, of these causes of action by this reference as though fully set forth herein.

165. Plaintiffs never used PCE or any other hazardous substances at the Property, and never stored, sold, or used PCE or other hazardous substances at the Property.

166. Defendants, through their acts and omissions, have discharged and released hazardous substances at the Property, and have refused to take the necessary action to investigate and clean up those substances and prevent their migration in the environment, despite a legal obligation to do so.

167. Plaintiffs are informed and believe, and upon such basis allege, that any environmental contamination at the Property relates solely to activities of Defendants and that Defendants are responsible as a matter of equity.

168. Plaintiffs have notified (and intend this complaint to be additional notification) Defendants by tendering to Defendants the obligation to defend Plaintiffs from claims by DTSC and others, pursuant to California Code of Civil Procedure Section 1021.6. As a result of Defendants' conduct and failure to defend, Plaintiffs have been required to respond to the DTSC and may be required to defend against additional actions brought by third parties related to the contamination for which Defendants are solely responsible. Plaintiffs again hereby demand defense and indemnity from Defendants. Plaintiffs are informed and believe, and thereon allege, that Defendants refused, and continue to refuse, said tender of defense by Plaintiffs.

169. Plaintiffs have incurred, and will continue to incur, response and defense costs relating to Hazardous Substances released by Defendants on the Property.

170. Plaintiffs' costs have been necessary to address contamination proximately caused by the acts and omissions of Defendants.

171. Plaintiffs' costs have been and will be incurred because of Defendants' refusal to satisfy their legal obligations.

172. Plaintiffs are entitled to equitable indemnity from Defendants for all costs incurred, and to be incurred, by Plaintiffs in connection with the contamination at and emanating from the Property, including attorneys' fees.

## **TWELFTH CAUSE OF ACTION**

*(Negligence – Against All Defendants)*

173. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 172, inclusive, of these causes of action by this reference as though fully set forth herein.

174. Defendants had a duty of care with respect to its actions at and upon the Property.

175. Plaintiffs are informed and believe, and on that basis allege, that Defendants breached their duty of care in connection with their operation of or activities at the Property by virtue of their actions as alleged herein.

176. Said breaches of duty by Defendants proximately caused the release or threatened release of Hazardous Substances at the Property. Plaintiffs have incurred costs in responding to that release or threatened release and expect to incur additional costs in the future as a result of said negligence on the part of Defendants.

177. Consequently, Plaintiffs are entitled to damages according to proof at trial.

## **THIRTEENTH CAUSE OF ACTION**

*(Negligence Per Se – Against All Defendants)*

178. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 177, inclusive, of these causes of action by this reference as though fully set forth herein.

179. Plaintiffs are informed and believe, and on that basis allege, that Defendants' conduct leading to the release or threatened release of hazardous substances at the Property violated applicable legal requirements governing the

1 transport, handling, storage, treatment, use and disposal of hazardous substances. Such  
2 release or threatened release is the type of occurrence which the aforementioned legal  
3 requirements are designed to prevent.

4 180. Plaintiffs are informed and believe, and on that basis allege, that  
5 Defendants had knowledge or reasonable cause to believe that a release or threatened  
6 release of a hazardous substance has come or will come to be located on or beneath the  
7 Property in amounts required to be reported to a state or local agency pursuant to law,  
8 and Defendants knowingly and willfully did not give Plaintiffs timely and adequate written  
9 notice, if any, of the release or threatened release or of that condition to Plaintiffs.

10 181. Plaintiffs are among the class of persons which such legal requirements  
11 were designed and intended to protect.

12 182. The violations by Defendants of those legal requirements proximately  
13 caused harm to Plaintiffs, who have been required to respond to said release and  
14 threatened release of hazardous substances at the Property, and who will be required to  
15 continue to respond to them in the foreseeable future. As a result of Defendants'  
16 actions, Plaintiffs are entitled to damages according to proof at trial.

17 183. The foregoing acts and omissions of Defendants violate various statutory  
18 provisions, including but not limited to, California Health and Safety Code §§ 25359, et.  
19 seq.; California Health and Safety Code §§ 25249.5 et seq.; California Health and Safety  
20 Code §§ 25100 et seq.; Health & Safety Code §§ 25189(c)-(d); California Water Code §§  
21 13000 et. seq.; and Fish & Game Code §§ 5650, et. seq.

22 184. Defendants failed to comply with the state law as detailed above. Plaintiffs  
23 have sustained injury as a result of Defendants' negligent conduct, including investigative  
24 costs, attorney's fees, and other costs, as described herein. As a further direct and  
25 proximate cause of the negligence per se by Defendants, Plaintiffs have suffered  
26 damages as previously described herein, including other consequential, incidental, and  
27 general damages to be proven at trial.

28

1 185. As a result of Defendants' statutory violations, Plaintiffs pray for damages  
2 and any other relief appropriate under the law as set forth below.

3  
4 **FOURTEENTH CAUSE OF ACTION**

5 *(Nuisance – Against All Defendants)*

6 186. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through  
7 185, inclusive, of these causes of action by this reference as though fully set forth herein.

8 187. Plaintiffs seek economic and property damages proximately caused by the  
9 acts and omissions of Defendants which caused the contamination at the Property.

10 188. Plaintiffs are informed and believe, and on that basis allege, that  
11 Defendants used the Property in violation of the law and public and private safety by  
12 improperly releasing, discharging, handling, and disposing of Hazardous Substances and  
13 contaminants, resulting in contamination of the Property.

14 189. Plaintiff are informed and believe, and on that basis allege, that the  
15 contamination at the Property constitutes a nuisance under California Civil Code Section  
16 3479, because it is injurious to health so as to interfere with Plaintiffs' free use and  
17 comfortable enjoyment of the property.

18  
19 **FIFTEENTH CAUSE OF ACTION**

20 *(Continuing Public Nuisance – Against All Defendants)*

21 190. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through  
22 189, inclusive, of these causes of action by this reference as though fully set forth herein.

23 191. Defendants' discharge, deposit, disposal and release of hazardous  
24 substances and contaminants has resulted in conditions that are injurious to health,  
25 offensive to the senses, and an interference with the free use of property so as to  
26 interfere with the comfortable enjoyment of life and property. The conditions caused by  
27 Defendants constitute a nuisance within the meaning of California Civil Code § 3479.

1 192. The nuisance caused by Defendants is a public nuisance because it affects  
2 an entire neighborhood and a considerable number of persons within the meaning of  
3 California Civil Code § 3480.

4 193. Plaintiffs have standing to bring this action to abate the public nuisance  
5 because it has been specially injurious to Plaintiffs within the meaning of California Civil  
6 Code § 3495.

7 194. The public nuisance is continuing because, among other things, it can be  
8 abated and it varies over time.

9 195. As a direct and proximate result of the public nuisance caused by  
10 Defendants, Plaintiffs have been damaged as alleged herein. In accordance with  
11 California Code of Civil Procedure § 731, Plaintiffs are entitled to damages as well as  
12 injunctive relief requiring Defendants to abate the continuing public nuisance.

13 196. In causing the public nuisance alleged herein, Defendants acted with  
14 oppression, fraud or malice, and in wanton disregard of the health and safety of those  
15 impacted by its public nuisance, including Plaintiffs.

16 197. As a result of the public nuisance, Plaintiffs pray for injunctive relief and  
17 damages as set forth below.

18  
19 **SIXTEENTH CAUSE OF ACTION**

20 *(Trespass – Against All Defendants)*

21 198. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through  
22 197, inclusive, of these causes of action by this reference as though fully set forth herein.

23 199. At all material times, Plaintiffs were in lawful possession of their land.

24 200. Defendants caused hazardous substances to intrude on Plaintiffs' land.  
25 Such intrusion was not permitted.

26 201. Plaintiffs are informed and believe, and on that basis allege, that this  
27 intrusion was intentional, negligent, or resulted from ultra hazardous conduct.

28

202. Defendants' trespass directly and proximately caused Plaintiffs' damages, including harm to property and economic interests.

203. Consequently, Plaintiffs are entitled to damages according to proof at trial.

### **SEVENTEENTH CAUSE OF ACTION**

*(Waste – Against All Defendants)*

204. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 203, inclusive, of these causes of action by this reference as though fully set forth herein.

205. Plaintiffs are informed and believe, and on that basis allege, that Defendants committed waste at and upon the Property by contaminating the property with Hazardous Substances and not remediating the contamination.

206. As a direct and proximate result of the above waste committed by Defendants, Plaintiffs have been damaged in an amount to be proven at trial for loss of use of the Property and inability to lease or sell the Property at the reasonable rental value of the Property.

### **EIGHTEENTH CAUSE OF ACTION**

*(Fraud/Constructive Fraud – Against Technichem, Inc, Mark Ng, and Stephen Tung only)*

207. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 206 as though fully set forth herein.

208. Pursuant to various leases with Plaintiffs, a stipulated judgment with DTSC, and environmental laws and regulations, Defendants knew that they were obligated to comply with environmental laws and regulations, investigate site conditions, conduct remedial activities, and obtain regulatory closure of the facility located on the Property.

209. Plaintiffs are informed and believe and, upon such information and belief, allege that: from the beginning of Defendants' tenancy until 2005, Defendants represented to Plaintiffs that Defendants' operations and activities on the Property complied with environmental laws and regulations; Defendants failed to notify Plaintiffs

1 of any discharges or releases of hazardous substances, in order to induce Plaintiffs to  
2 enter into and to refrain from terminating these written leases and amendments for the  
3 continued tenancy on the site of Defendants Technichem Inc. and Mark Ng.

4 210. Plaintiffs are informed and believe and, upon such information and belief,  
5 allege that Defendants Technichem Inc. and Mark Ng represented to Plaintiffs that no  
6 defaults or breaches existed in their performance of the terms, covenants, and conditions  
7 of their lease agreements with Plaintiffs, including but not limited to:

8       ▪ Technichem Inc. and Mark Ng had complied with laws, guidelines,  
9 and safety practices applicable to generating, emitting, releasing, discharging, storing,  
10 processing and venting of hazardous substances,

11       ▪ Technichem Inc. and Mark Ng had repaired and maintained the  
12 leased premises, the fixtures and appurtenances in good order and repair and in clean  
13 and wholesome, condition, in compliance with all laws and ordinances,

14       ▪ Technichem Inc. and Mark Ng had used and occupied the leased  
15 premises in accordance with all appropriate federal, state, county and city laws,  
16 ordinances, or regulations; and

17       ▪ Technichem Inc. and Mark Ng had not committed any waste upon  
18 the leased premises or any nuisance or misuse of the leased premises.

19 211. Plaintiffs are informed and believe and, upon such information and belief,  
20 allege that these representations were made by Technichem Inc. and Mark Ng to induce  
21 Plaintiffs to continue contracting for the lease of Property, and, in reliance upon those  
22 representations, Plaintiffs entered into a lease agreement and continued to lease the  
23 Property to Defendants Technichem Inc. and Mark Ng .

24 212. Plaintiffs are informed and believe and, upon such information and belief,  
25 allege that Defendants Technichem Inc. and Mark Ng knowingly and willfully made these  
26 representations with no reasonable grounds for believing them to be true, and that by or  
27 before January 6, 2006, Defendants ceased its investigative work at the Property,  
28

1 purposefully failing to comply with regulatory directives for additional investigation of the  
2 contamination at the Property, and knowingly delaying remediation of the Property.

3 213. Plaintiffs reasonably relied on Defendants' actions and representations and  
4 had no knowledge of any actual or potential contamination to the Property from  
5 Defendants' operations until January 2006. In or about January 2006, Plaintiffs  
6 discovered that the representations made by Defendants were in fact false, in that  
7 Defendants were not competently pursuing site closure. Plaintiffs are informed and  
8 believe and, upon such information and belief, allege that Defendants purposefully or  
9 negligently exacerbated the contamination at the Property due to their repeated delays in  
10 responding to the regulatory directives.

11 214. Plaintiffs are informed and believe, and on that basis allege, that  
12 Defendants failed to comply with minimum commercial, professional and regulatory  
13 standards, misled Plaintiffs into believing their operations and activities were in  
14 compliance with the law and with the terms of the lease, misrepresented Defendants'  
15 ability to complete facility closure and the cost of facility closure, and concealed from  
16 Plaintiffs their: (a) practices for the disposal of hazardous substances, (b) failure to  
17 maintain its equipment (and the premises and fixtures and appurtenances thereto) to  
18 minimize or prevent leaks or spills of PCE or other hazardous materials, and (c) intent to  
19 cease its voluntary investigative and cleanup efforts under the oversight of DTSC.

20 215. Plaintiffs are informed and believe, and on that basis allege, that  
21 Defendants operated their solvent recycling business knowing of the discharge of  
22 hazardous substances into the environment, or the actions that resulted in the discharge,  
23 and had the legal ability to prevent, minimize, mitigate, clean up, abate, investigate  
24 and/or otherwise respond to the discharge.

25 216. Plaintiffs are informed and believe, and on that basis allege, Defendants'  
26 acts or omissions have proximately caused Plaintiffs' damages.

1           217. Defendants, in connection with their generation, release, discharge,  
2 handling, collection, storage, processing, and/or disposal of the Hazardous Substances,  
3 have engaged in a pattern of negligent, oppressive, and malicious behavior.

4           218. Plaintiffs are informed and believe, and on that basis allege, that (although  
5 Defendants have known about this contamination and the fact that such contamination  
6 may move to adjacent properties), Defendants have concealed from Plaintiffs, the  
7 releases of hazardous substances, the violations of environmental laws and regulations,  
8 DTSC's enforcement action against Technichem, Inc. and Mark Ng for such violations,  
9 and Defendants' intent to abandon all investigation and remediation efforts from  
10 Plaintiffs.

11           219. Plaintiffs are informed and believe, and on that basis allege, that  
12 Defendants acted wrongfully and/or negligently in (a) failing to meet commercial or  
13 professional standards, (b) failing to comply with environmental laws and regulations, (c)  
14 contaminating the Property, and (d) ceasing in bad faith its efforts to investigate and  
15 clean up the Property under the oversight of DTSC.

16           220. By virtue of the relationship existing between Defendants and Plaintiffs,  
17 Defendants owed a fiduciary duty to Plaintiffs, which was breached by the false  
18 representations made to Plaintiffs by Defendants.

19           221. As a direct and proximate result of Defendants' failure to comply with the  
20 terms of the lease and with regulatory directives, and their concealment from Plaintiffs of  
21 such failure, Plaintiffs have sustained damages, and are continuing to be damaged, in a  
22 sum presently unascertained, but in an amount to be shown according to proof at the  
23 time of trial.

24           222. Plaintiffs pray for judgment as hereinafter set forth.  
25  
26  
27  
28

**NINETEENTH CAUSE OF ACTION***(Business & Professions Code § 17200 –**against Technichem, Inc, Mark Ng, and Stephen Tung only)*

223. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 222, inclusive, of these causes of action by this reference as though fully set forth herein.

224. California Business & Professions Code § 17200 defines unfair competition to include any "... unlawful, unfair or fraudulent" business act or practice.

225. Plaintiffs are informed and believes, and on that basis alleges, that Technichem, Inc. and Mark J. Ng and Stephen S. Tung have engaged, and continues to engage, in unlawful and unfair business practices within the meaning of California Business & Professions Code § 17200 through their discharges of solid and hazardous wastes, hazardous substances, and contaminants at the Property, failure to mitigate the contamination, and concealment of regulatory and statutory violations as alleged herein.

226. Plaintiffs are informed and believe, and on that basis allege, that during Technichem's Inc.'s business operations on the Property, Technichem, Inc., Mark Ng, and Stephen Tung were involved in the business of purchasing, using, producing, generating, processing, storing, releasing, discharging, disposing of, and venting Hazardous Substances. As such, Technichem, Inc., Mark Ng, and Stephen Tung had superior knowledge regarding the attributes and propensities of the Hazardous Substances and their effects on the environment and human health. Because Technichem, Inc., Mark Ng, and Stephen Tung have such superior knowledge with respect to their own business processes and the Hazardous Substances it produced, generated, emitted, released, discharged, and vented, Defendants had and continue to have an obligation to disclose to Plaintiffs and the public accurate, reliable and completely truthful information about the dangers and consequences of exposure to such Hazardous Substances. Further, Defendants had and continue to have an obligation not to conduct their business activities in an oppressive and malicious manner.

1           227. Plaintiffs are informed and believe, and on that basis allege, that by  
2 violating Health and Safety Code section 25359.7(b)(which protects landlords by  
3 obligating a lessee who knows or has reasonable cause to believe that any release of a  
4 hazardous substance has come or will come to be located on or beneath that real  
5 property to provide written notice of that condition to the lessor), Defendants  
6 Technichem, Inc. and Mark Ng have committed an unlawful business act and therefore  
7 violated § 17200.

8           228. Plaintiffs are informed and believe, and on that basis allege, that  
9 Defendants' knowing and willful conduct leading to the release or threatened release of  
10 hazardous substances at the Property and Defendants' purposeful failure to mitigate (as  
11 required by the Water Code) the contamination violated applicable legal requirements  
12 governing the transport, handling, storage, treatment, use and disposal of solid and  
13 hazardous wastes and Hazardous Substances, which is the type of conduct that Business  
14 and Profession Code section 17200 et seq. is designed to prevent.

15           229. Business and Professions Code section 17204 permits "any person who has  
16 suffered injury in fact and has lost money or property as a result of such unfair  
17 competition" to bring an action on behalf of itself, its members, or the general public.

18           230. Plaintiffs have an ownership interest in the property that Defendants  
19 Technichem, Inc. and Mark Ng have leased. Plaintiffs have suffered injury in fact and  
20 have lost money and property value as a result of the unlawful business practices,  
21 because Plaintiffs are unable to sell the Property for full market value or lease the  
22 Property for full rental value. Thus, Plaintiffs have standing to bring this claim because  
23 they are among the class of persons such legal requirements were designed and  
24 intended to protect.

25           231. Plaintiffs bring this enforcement action on behalf of themselves, all others  
26 similarly situated, the general public, and in the interest of the public pursuant to  
27 Business and Professions Code § 17204 to prevent future harm to the public at large by  
28 seeking to enjoin the unlawful business practices that resulted in soil and groundwater

1 contamination at the Property and that continue to allow the contamination to spread.

2 Thus, Plaintiffs' action under Business and Professions Code § 17200 is predicated on  
3 Technichem, Inc. and Mark Ng's violation of Health & Safety Code § 25359.7(b) pursuant  
4 to the California Business & Professions Code § 17204.

5 232. California Business & Professions Code § 17203 provides that the court may  
6 make such orders or judgments as may be necessary to:

7 ... prevent the use or employment by any person of any  
8 practice which constitutes unfair competition, as defined in  
9 this chapter, or as may be necessary to restore to any person  
in interest any money or property, real or personal, which  
may have been acquired by means of unfair competition.

10 233. As a result of Defendants' violations of California Business & Professions  
11 Code §§ 17200, et seq., Plaintiffs pray for injunctive relief and restitution as set forth  
12 herein.

### 14 **TWENTIETH CAUSE OF ACTION**

15 *(Declaratory Relief Under State Law – Against All Defendants)*

16 234. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through  
17 233, inclusive, of these causes of action by this reference as though fully set forth herein.

18 235. An actual controversy exists between Plaintiffs and Defendants with respect  
19 to their respective rights and obligations under federal and state laws. Plaintiffs seek a  
20 judicial determination of the respective rights and duties of the parties with respect to  
21 the rights, claims and damages alleged herein.

22 236. Plaintiffs also seek a declaration by this court that Defendants were  
23 obligated contractually to investigate and clean up the contamination; that Plaintiffs  
24 complied with all conditions and obligations under the leases with respect to their rights  
25 to defense and indemnity relating to the underlying claims; that because of Defendants'  
26 breach of contract, negligence, fraud/misrepresentation, nuisance, trespass, unfair  
27 business practices, and statutory violations, Plaintiffs have been damaged according to  
28 proof.

237. The requested declaration is necessary and appropriate at this time to allow Plaintiffs to ascertain their rights and duties with respect to the claims at issue in this action.

238. As a result, Plaintiffs pray for declaratory relief as set forth below.

### **TWENTY-FIRST CAUSE OF ACTION**

*(Breach of Contract for Duty to Defend and Indemnify as a Third Party Beneficiary—  
Against Zurich Insurance Company only)*

239. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 238 of this complaint.

240. Technichem, Inc. obtained an Environmental Impairment Liability (EIL) Policy from Zurich Insurance Company, which was issued by Steadfast Insurance Company, that covered contamination at the Property.

241. Zurich's policy cover sums which "an insured" becomes legally obligated to pay as "loss" incurred because of "claims." The insurance policy expressly states that Zurich is obligated to "pay on behalf of [Technichem] any "loss" caused by a "pollution event" on, at, under or coming from a "covered location" that an insured" is legally obligated to pay as a result of a "claim" first made against the "insured" during the "policy period" provided that the "claim" is reported to [Zurich] during the "policy period", or any applicable extended reported period." [Section I].

242. The policy provides the following definitions:

(a) "Claim" means "any demand received by an "insured" alleging liability or responsibility on the part of the "insured" for "losses" caused by a "pollution event" on, at, under or coming from a "covered location." [Section II, C].

(b) "Loss" means compensatory damages or legal obligations arising from "bodily injury" or "property damage." [Endorsement #1, Section IV].

(c) "Pollution event" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant, contaminant or

1 pollutant, including smoke, vapor, soot, fumes, acids, alkalis,  
2 chemicals, and waste. [Section II, N].

3 (d) "Covered locations" is the real property listed on the endorsement  
4 as 4245 Halleck Street in Emeryville, California. [Section II, G].

5 (e) "Property" damage includes: (1) physical injury to or destruction  
6 of tangible property including the resulting loss of use thereof; (2)  
7 loss of use of tangible property that has not been physically  
8 injured or destroyed; (3) cleanup costs"; or (4) natural resource  
9 damages. [Section II, O].

10 243. The primary purpose of the EIL Policy was to satisfy Title 22 regulations for  
11 financial assurance: "Coverage pursuant to this paragraph is effective solely provided  
12 that the "claim" is one for which the "insured" is required to demonstrate financial  
13 assurance pursuant to 22 CCR 66264.147 or 22 CCR 66265.147." EIL Policy, ¶2, Insuring  
14 Agreement (as modified by Endorsement No.1).

15 244. 22 CCR § 66264.147(a) and 66265.147(a) provide in relevant part that:  
16 "An owner or operator of a hazardous waste transfer, treatment, storage or disposal  
17 facility or a group of such facilities, shall demonstrate to the Department financial  
18 responsibility for *bodily injury* and *property damage* to *third parties* caused by *sudden*  
19 *accidental occurrences* arising from operations of the facility or group of facilities in the  
20 amount of at least \$ 1 million per occurrence with an annual aggregate of at least \$ 2  
21 million, *exclusive of legal defense costs...*" (*Emphasis Added*). "Sudden accidental  
22 occurrence" means "an unforeseen and unexpected accident which is not continuous or  
23 repeated in nature and results in bodily injury, property damage or environmental  
24 degradation." 22 CCR § 66260.10.

25 245. The insurance placed by Technichem, Inc. with Zurich Insurance Company  
26 was intended to benefit Plaintiff as the owner of the property, which is a "covered  
27 location" on the EIL Policy. In addition, the policy affords coverage for "losses" including  
28 "property damage", which are more broadly defined and encompass response costs to  
DTSC's directives.

1 246. After the discovery of contamination on the Property, Plaintiffs made a  
2 claim for indemnity and defense to Technichem, Inc. and Zurich Insurance Company in a  
3 letter dated September 22, 2005 by Plaintiffs' counsel.

4 247. In a letter by Plaintiffs' counsel dated June 22, 2007, Plaintiffs requested  
5 that Zurich Insurance Company provide an insurance determination for coverage on the  
6 September 22, 2005 claim.

7 248. Plaintiffs are informed and believe, and on that basis allege, that on or  
8 about July 2, 2007, Zurich Insurance Company agreed to defend Technichem, Inc.

9 249. By letter to Plaintiffs' counsel on or about July 20, 2007, Zurich Insurance  
10 Company refused to perform their obligations under the policy by failing and refusing to  
11 defend or indemnify Plaintiffs against the claims for investigation and cleanup asserted  
12 against Plaintiffs by the Department of Toxic Substances Control.

13 250. Neither Technichem, Inc. nor Zurich Insurance Company have made any  
14 payments to Plaintiffs or have defended Plaintiffs against DTSC.

15 251. On information and belief, Plaintiffs allege that the insurance policy  
16 contains a provision for payment of attorneys fees and courts costs in any litigation.  
17 Plaintiffs are therefore entitled to their attorneys fees and court costs incurred herein.

18 252. As a direct and proximate result of Zurich Insurance Company's breach of  
19 contractual duties, Plaintiffs have sustained damages in a sum presently unascertained,  
20 but in an amount to be shown according to proof at the time of trial. Plaintiffs are  
21 continuing to be damaged, have expended over \$225,000, including legal fees and site  
22 investigation costs, and will have to spend additional sums for costs of investigation and  
23 defense.

24  
25 **TWENTY-SECOND CAUSE OF ACTION**

26 *(Declaratory Judgment – Against Zurich Insurance Company only)*

27 253. Plaintiffs reallege and incorporate by reference the allegations of  
28 paragraphs 1 through 252 of this complaint.

1           254. A dispute has arisen between Plaintiffs and Zurich Insurance Company  
2 concerning and relating to Plaintiffs' rights, obligations and duties with regard to the  
3 contamination and with regard to the insurance. Plaintiffs allege that Technichem, Inc.  
4 was required to obtain insurance in an amount necessary to pay for all damage related to  
5 contamination at the Property. Zurich Insurance Company issued the policy to provide  
6 such coverage and financial assurance. Plaintiffs further allege that Zurich Insurance  
7 Company failed to pay an amount necessary to reimburse Plaintiffs for all loss and  
8 damage to the property from the contamination and to defend Plaintiffs against claims by  
9 DTSC.

10           255. A judicial declaration is necessary and appropriate at this time in order that  
11 Plaintiffs may ascertain their rights and duties with regard to the policy and the insurance  
12 benefits.

13           256. Plaintiffs seek a declaration by this court that Zurich Insurance Company is  
14 obligated contractually to indemnify and defend Plaintiffs for claims by DTSC related to  
15 Plaintiff's property; that Plaintiffs complied with all conditions and obligations under the  
16 subject insurance policy with respect to their rights to defense and indemnity relating to  
17 the underlying claims; that because of Zurich Insurance Company's breach of contract  
18 and denial of coverage, Plaintiffs have been damaged according to proof.

19

20

**PRAYER FOR RELIEF**

21

Plaintiffs pray for judgment against Defendants as follows:

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1. For mandatory, preliminary and permanent injunction pursuant to RCRA  
ordering Defendants to take all necessary actions to investigate, abate, and cleanup the  
contamination at or emanating from the Property, including but not limited to ordering  
Defendants to investigate, abate and remediate the endangerment posed by the  
contamination, and to comply, at their expense, with any and all regulatory agencies'  
demands regarding the contamination;

1           2.     For a declaration that Technichem, Inc., Mark Ng, and Stephen Tung have  
2 operated and are operating a solid waste disposal facility that may present an imminent  
3 and substantial endangerment in violation of section 7002 of RCRA;

4           3.     For entry of judgment against Defendants for all response costs incurred by  
5 Plaintiffs attributable to hazardous substances released by Defendants at, under, or near  
6 the Property;

7           4.     For civil penalties of up to \$2,500 per day per individual exposure to  
8 Hazardous Substances discharged by Technichem, Inc, Mark Ng, and Stephen Tung  
9 during the course of their business operations and in the absence of facility closure,  
10 pursuant to Health and Safety Code § 25249.7(b);

11          5.     For contribution by Defendants for any and all response costs, including  
12 those that may be incurred by Plaintiffs in the future;

13          6.     For indemnification by Defendants, for all costs, damages, expenses or  
14 claims resulting from claims related to the contamination on, at, or near the Property;

15          7.     For a declaration that Defendants are obligated to indemnify Plaintiffs from  
16 and against any and all claims arising out of contamination at the Property;

17          8.     For an order directing Defendants to cease the unlawful open dumping of  
18 solid waste.

19          9.     For an order directing that Defendants conduct a comprehensive  
20 investigation and study to determine the characteristics of the waste and to clean up the  
21 extent of the contamination;

22          10.    For a mandatory preliminary and permanent injunction as specifically  
23 authorized by California Business & Professions Code § 17200, *et seq.*, ordering  
24 Technichem, Inc, Mark Ng, and Stephen Tung to take all actions necessary to cleanup  
25 contamination at or emanating from the Property;

26          11.    For an order pursuant to California Business & Professions Code § 17203  
27 restoring to Plaintiffs all money they have spent to respond to, investigate, remove or  
28 remediate the contamination;

12. For damages according to proof at trial, including but not limited to rent owed to Plaintiffs, related to Technichem, Inc. and Mark Ng's occupancy of the Property and breach of the lease;

13. For damages according to proof at trial for all costs and expenses paid and to be paid in complying with regulatory agency's claims relating to investigation and cleanup of the Property;

14. For an award of the costs of this litigation including but not limited to costs that Plaintiffs have incurred and continue to incur to defend themselves against third-party claims relating to the investigation and cleanup of site contamination on the Property, reasonable attorneys' fees and experts' fees, and including but not limited to similar fees to monitor Defendants' compliance with any orders or judgments issued by this Court pursuant to RCRA § 7002(e), 42 U.S.C § 6972(e), and California Code of Civil Procedure § 1021.5;

15. For any award of damages, in amount according to proof at trial, consisting of the costs, fees, and other expenses authorized under California Code of Civil Procedure section 1021.6;

16. For any and all remedies authorized under section California Health and Safety Code §§ 25359, et. seq.; California Health and Safety Code §§ 25249.5 et seq.; California Health and Safety Code §§ 25100 et seq.; Health & Safety Code §§ 25189(c)-(d); California Water Code §§ 13000 et. seq.; and Fish & Game Code §§ 5650, et. seq., including but not limited to actual damages and civil penalties for each incident in which Defendants knowingly and willfully failed to provide written notice when required by Health and Safety Code §§ 25359.7(b)(1) and 25182(c)-(d) of the release or threatened release at or under the Property or of that condition to Plaintiffs under Defendants' lease(s);

17. For declaratory judgment pursuant to Code of Civil Procedure, § 1060 declaring that Defendants are engaged in an unlawful business practice constituting unfair competition in violation of Business and Professions Code, §§ 17200 et seq. by

1 having knowingly and intentionally exposed individuals to a chemical known to the State  
2 of California to cause developmental and reproductive toxicity without first giving clear  
3 and reasonable warning as required by Health and Safety Code §§ 25359.7 et seq.;

4 18. For punitive and exemplary damages as justified by proof at trial pursuant  
5 to Cal. Civ. Code § 3294, because Defendants' conduct was so outrageous and  
6 oppressive as to demonstrate a conscious and/or reckless disregard for human health  
7 and safety and the environment;

8 19. For entry of a declaratory judgment against Defendants and in favor of  
9 Plaintiffs according to proof at trial;

10 20. For declaratory judgment that Zurich Insurance Company is obligated  
11 contractually to indemnify and defend Plaintiffs for claims by DTSC related to Plaintiff's  
12 property;

13 21. For prejudgment interest at the maximum rate permitted by law;

14 22. For such other and further relief as the Court may deem appropriate.

15  
16 **JURY DEMAND**

17 Plaintiffs hereby demand a trial by jury of all issues triable by jury.

18  
19 Dated: April 30, 2008

20 WACTOR & WICK LLP

21  
22 By: 

23 WILLIAM D. WICK

24 JON K. WACTOR

25 ANNA L. NGUYEN

26 Attorneys for Plaintiffs

27 Virginia Pellegrini, and

28 Virginia Pellegrini,

Trustee of the Mario J. and Virginia E.  
Pellegrini Trust

1 WILLIAM D. WICK (State Bar No. 063462)

2 JON K. WACTOR (State Bar No. 141566)

3 ANNA L. NGUYEN (State Bar. No. 226829)

4 WACTOR & WICK LLP

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7 Telephone: (510) 465-5750

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9 Attorneys for Plaintiffs

10 Virginia Pellegrini and

11 Virginia Pellegrini, Trustee

12 of the Mario J. and Virginia E. Pellegrini Trust

13 UNITED STATES DISTRICT COURT

14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 VIRGINIA PELLEGRINI, Trustee of the  
16 Mario J. and Virginia E. Pellegrini Trust,  
17 and VIRGINIA PELLEGRINI, an  
18 individual,

19 Plaintiffs,

20 v.

21 TECHNICHEM, INC., a California  
22 corporation, MARK J. NG, an individual;  
23 STEPHEN S. TUNG, an individual;  
24 BOBBY PAGE CLEANERS, BONDED  
25 CLEANERS, CALIFORNIA HIGHWAY  
26 PATROL; CALIFORNIA STATE PRISON  
27 – CORCORAN, CALIFORNIA STATE  
28 PRISON AT FOLSOM, CALIFORNIA  
STATE PRISON – SAN QUENTIN,  
COLONY CLEANERS – 28, DESERT  
DISCOUNT CLEANERS, DOLLAR  
CLEANERS, DEUEL VOCATIONAL  
INSTITUTE, ECONOMY CLEANERS,  
EXECUTIVE (ONE HOUR)  
MARTINIZING, FRANCHISE TAX  
BOARD, INTERCITY CLEANERS, M & M  
CLEANERS, MONROVIA CLEANERS,  
MULE CREEK STATE PRISON, ONE  
HOUR CLEANERS, ONE PRICE  
CLEANERS, PACIFIC GROVE  
CLEANERS, PARADISE CLEANERS,  
PARK AVENUE CLEANERS,

Case No. 07-CV-02497-CRB

**CERTIFICATION OF INTERESTED  
ENTITIES OR PERSONS**

1 PROCUREMENT OFFICE OF THE  
2 DEPARTMENT OF CORRECTIONS,  
3 CORRECTIONAL TRAINING FACILITY,  
4 PROCUREMENT OFFICE OF THE  
5 SIERRA CONSERVATION CENTER, R.  
6 BAUERLE TRUCKING, RESOLVENT,  
7 INC., ROMIC ENVIRONMENTAL  
8 TECHNOLOGIES, SAVE-ON CLEANERS,  
9 VIRGINIA CLEANERS, VOGUE  
10 CLEANERS, ZURICH INSURANCE  
11 COMPANY, and DOES 1 to 200,

12 Defendants.

13 Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date,  
14 other than the named parties, there is no such interest to report.

15 Dated: April 30, 2008

16 WACTOR & WICK LLP

17 By: 

18 WILLIAM D. WICK

19 JON K. WACTOR

20 ANNA L. NGUYEN

21 Attorneys for Plaintiffs

22 Virginia Pellegrini, and

23 Virginia Pellegrini,

24 Trustee of the Mario J. and Virginia E.  
25 Pellegrini Trust

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 180 Grand Avenue, Suite 950, Oakland, California. On April 30, 2008 I served the within document(s):

**PLAINTIFF VIRGINIA PELLEGRINI AS TRUSTEE OF THE MARIO J. & VIRGINIA E. PELLEGRINI TRUST, and VIRGINIA PELLEGRINI, AN INDIVIDUAL, FIRST AMENDED COMPLAINT FOR ENVIRONMENTAL COST RECOVERY AND CONTRIBUTION, INJUNCTIVE RELIEF, DECLARATORY RELIEF, AND DAMAGES**

**X** By electronically filing the document(s) listed above with the United States District Court, Northern District of California through CM/ECF (E-file);

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at Oakland, CA, addressed as set forth below;

by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) set forth below;

by placing the document(s) listed above in a sealed envelope with postage fully prepaid, and mailing via overnight mail service, addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 30, 2008 at Oakland, California.

*Carol B. Ebert*

Carol B. Ebert

**Addressee(s):**

Brian M. Ledger  
Paul A. Henreid  
Gordon & Rees LLP  
101 West Broadway  
Suite 1600  
San Diego, CA 92101  
*Attorneys for Defendants Technichem Inc.,  
Mark J. Ng, and Stephen S. Tung*